IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

BEFORE THEIR LORDSHIPS

ON FRIDAY, 8TH MAY, 2020

OLABODE RHODES-VIVOUR	**JUSTICE, SUPREME COURT**
MARY UKAEGO PETER-ODILI	**JUSTICE, SUPREME COURT**
OLUKAYODE ARIWOOLA	**JUSTICE, SUPREME COURT**
KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN	**JUSTICE, SUPREME COURT**
JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
AMINA ADAMU AUGIE	**JUSTICE, SUPREME COURT**
EJEMBI EKO	**JUSTICE, SUPREME COURT**

SC. 622C/2019

BETWEEN:

UDE JONES UDEOGU :: APPELLANT.

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ORJI UZOR KALU :::::::::::::::::::::: RESPONDENT.
3. SLOK NIGERIA LIMITED

JUDGMENT

(Delivered by EJEMBI EKO, JSC)

On 31st October, 2016 at the Federal High Court, Lagos Division the Appellant, and the 2nd and 3rd Respondents were arraigned before the

Honourable, Justice M. B. Idris – Judge of the Federal High Court, on several criminal allegations or charges. They each pleaded not guilty to all the charges. Trial thereafter commenced before his Lordship M. B. Idris, J. The prosecution called a total of 19 witnesses and on 11th May, 2018 they closed their case. On 28th May, 2018 the Appellant entered a no case submission. The prosecution (the 1st Respondent) on 17th July, 2018, filed written address in opposition to the no case submission.

The Honourable, M. B. Idris, J was on 20th June, 2018, elevated to the Court of Appeal as a Justice of the Court. On 22nd June, 2018 the Honourable, Justice M. B. Idris took his oath as a Justice of the Court of Appeal and had from his said elevation ceased to be a judge of the Federal High Court.

On 2nd July, 2018, vide letter No. PCA/S.19/XIV/20 the President of the Court of Appeal, purporting to act under Section 396(7) of the Criminal Justice Act, 2015 (sic: Administration of Criminal Justice Act, 2015?) issued to the Honourable, Justice M. B. Idris, Justice of the Court of Appeal his "fiat/permission to conclude the part heard Criminal Matter: FHC/ABJ/CR/J6/07 between Federal Republic of Nigeria vs. Orji Uzo Kalu & 2 Ors now pending before the Federal High Court Lagos". The FIAT directed the Honourable, Justice M. B. Idris, JCA to conclude the matter before the end of September 2018. The salient portion of the FIAT No. PCA/S.19/XIV/20 dated 2nd July, 2018 at page 1360 of the Record, is herein below reproduced, to wit:

OFFICE OF THE HONOURABLE PRESIDENT
COURT OF APPEAL

Our Ref: PCA/S.19/XIV/20 Your Ref – Date: 2nd July, 2018

Hon. Justice M. B. Idris
Court of Appeal (Headquarters)
Abuja.

My Lord,

FIAT TO HON. JUSTICE M. B. IDRIS, JUSTICE COURT OF APPEAL TO CONCLUDE THE PART HEARD CORRUPTION TRIAL IN SUIT NO. FHC/ABJ/CR/56/07 AT THE FEDERAL HIGH COURT LAGOS.

By the virtue of the provisions of Section 396(7) of the Criminal Justice Act, 2015, you have my FIAT/permission to conclude the part heard criminal matter: FHC/ABJ/CR/56/07 between Federal Republic of Nigeria vs. Orji Uzo Kalu & ors now pending before the Federal High Court Lagos.

The matter to be concluded before the end of September, 2018.

Please be assured of my warmest regards.

Hon. Justice Z. A. Bulkachuwa, CFR
President, Court of Appeal.

Section 396(7) of the Administration of Criminal Justice Act, 2015 (ACJA, 2015) which the Honourable, the President

of the Court of Appeal seemed, purportedly, to act in pursuance of in the "FIAT/Permission" he issued to the Hon., Justice M. B. Idris, JCA to return to the Federal High Court, Lagos to conclude the part heard criminal matter he left thereat upon his elevation to the Court of Appeal, provides –

> 396(7) Notwithstanding the provision of any other law to the contrary, a judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to as a High Court Judge only for the purpose of concluding any part – heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time.
>
> [underlinings supplied]

"Dispensation", according to both Oxford Advanced Learner's Dictionary and Black's Law Dictionary 9th Ed., is a

permission to do something that is ordinarily forbidden. That is; a permission to do something that is not usually done, allowed, legal or lawful. Therefore, the question is; On what constitutional authority does either the National Assembly or the President of the Court of Appeal stand to grant this "dispensation" to the Honourable, M. B. Idris, JCA to continue to act as a Judge of the Federal High Court after he had ceased to be a judge of the Federal High Court upon his elevation to the Court of Appeal?

Pursuant to the FIAT, above reproduced, Hon. M. B. Idris, JSC resumed his sitting in the criminal matter No FHC/ABJ/CR 156/07 Between: Federal Republic of Nigeria vs. Orji Uzo Kalu & ors. On 16th July, 2018 the prosecution sought to amend the charges. The application was vehemently opposed. In his considered ruling delivered on 17th July, 2018, the Hon, M. B.

Idris, JCA allowed the amendment. Thereafter the prosecution applied to withdraw the Further Amended Charge filed on 30th May, 2018 and substitute same with the 2nd Further Amended Charge filed on 16th July, 2018. The application was granted. The Further Amended Charge filed on 30th May, 2018 was consequently struck out.

A fresh plea was taken to the 2nd Further Amended Charge filed on 16th July, 2018. The Appellant, like the 2nd and 3rd Respondents, pleaded not guilty afresh to the 2nd Further Amended Charge.

Arguments on the Appellants No Case Submission were taken on 25th July, 2018 before M. B. Idris, JCA. In his considered ruling delivered on 31st July, 2018, His Lordship, M. B Idris, JCA dismissed the No Case Submission. The Appellant was thereafter called upon to enter upon his

defence. In his appeal against the ruling, the Appellant challenged the competence of M. B. Idris, JCA to continue to sit and hear the matter: FHC/CR/56/07 then pending before the Federal High Court, Lagos. The Court of Appeal (hereinafter called "the lower court") heard arguments in the appeal on 7th February, 2019 and on 24th April, 2019, in the considered judgment the justices of the lower Court unanimously dismissed the appeal – hence this further appeal.

This appeal is predicated on facts that are neither complex nor convoluted. The Honourable, Justice M. B. Idris was until 20th June, 2018 a Judge of the Federal High Court. On 20th June, 2018 he was elevated the Court of appeal and on 22nd June, 2018 he took his oath of allegiance and oath of office as a Justice of the Court of appeal. It is neither disputed nor in any doubt that he had ceased to be a judge of the

Federal High Court from the moment of his elevation to the Court of Appeal. His Lordship's subscription to the oath of the office of the Justice of the Court of appeal on 22nd June, 2018 puts the matter beyond any iota of doubt that he had ceased to be a Judge of the Federal High Court. As at 22nd July, 2018, when the President of the Court of Appeal issued to M. B. Idris, JCA –

> **By virtue of the provisions of Section 396(7) of the Criminal Justice Act, 2015, you have my FIAT/Permission to conclude the part heard matter: FHC/CR/56/07 – now pending before the Federal High Court, Lagos;**

the said Justice M. B. Idris, JCA had no doubt ceased to be a Judge of the Federal High Court.

The Criminal Justice Act, 2015, under which the President, Court of Appeal issued the FIAT/Permission

pursuant to Section 396(7) thereof (as opposed to the Administration of Criminal Justice Act, 2015) does not exist in the *corpus juris* of the Laws of the Federation of Nigeria, particularly the 2015 edition thereof. Ordinarily, an act done pursuant to, or in furtherance of, a non-existent law is itself a nullity. It has no binding effect. As Ogundare, JSC had put it in ADEFULU & OR v. OKULAJA & ORS (1996) LPELR – 90 (SC) at 34 "null and void" means that which binds no one or is incapable of giving effect to any rights or obligations under any circumstances, or that which is of no effect.

The parties, particularly the Appellant, seem to think that the President, Court of Appeal, on 2nd July, 2018, issued his "FIAT/permission" to Hon. Justice M. B. Idris, JCA, "to conclude the part-heard criminal matter: FHC/CR/56/07 – " pursuant to and in furtherance of Section 396(7) of the

Administration of Criminal Justice Act, 2015, and not Section 396(7) of the non-existent Criminal Justice Act, 2015. It is on this basis and in the light of the decision of the Court of Appeal that the Appellant formulates the following 3 issues for the determination of this appeal. That is:

> **ISSUE ONE**: whether Court of Appeal was right when it held that Section 396(7) of the Administration of Criminal Justice Act, (ACJA) 2015 vests a Justice of the Court of Appeal with requisite power to sit and conclude part heard matter at the Federal High Court and that the said Section is not contrary to Sections 250 (2) and 253 of the Constitution of the Federal Republic of Nigeria 1999 as (amended)
> (Grounds 1 and 2)
>
> **ISSUE TWO**: Whether the failure and/or refusal of the court below to

determine the issue of the power of the Hon. President, Court of Appeal to issue a fiat to a Justice of the Court of Appeal to act as a Judge of the Federal High Court raised by the Appellant does not violate the appellant's right to fair hearing (ground 3).

ISSUE THREE: whether the lower court was right in its decision that Hon. Justice M. B. Idris (JCA) can by reference to himself as "Judge" in the proceedings confer on himself jurisdiction to sit as a judge of the Federal High Court (ground 4)

The 1st Respondent adopted the Appellant's Issue 1 as the sole issue for the determination of the appeal. This sole issue is in consonance with the question on the constitutionality of both the statutory dispensation and the administrative

Fiat/permission respectively given by the National Assembly in Section 396(7) ACJA, 2015 and the president of the Court of Appeal on 2nd July 2018.

The AJCA, 2015 in its 495 Sections, does not define “law”, or “any other law”, or the “any other law to the contrary” that its provision in Section 396(7) purports to override. It appears “any other law to the contrary” includes any other written law or statute, including the 1999 Constitution, as amended that contradicts Section 396(7) of the ACJA! The National Assembly, in view of the supremacy provision of the Constitution, in Section 1 thereof, could not have intended that audacious insubordination to the Constitution, or state of absurd fool hardiness of legislating into Section 396(7) of the ACJA, 2015: that the provision would also override any provision of the Constitution to the contrary of Section 396(7)

ACJA. The Constitution is the grund norm from which the ACJA, 2015 derived its legitimacy. Section 1(3) of the Constitution is emphatic –

> If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be avoid.

We had had previous decisions of this Court in **OGBUNYINYA & ORS v. OKUDO & ORS (1979) NSCC 77 and OUR LINE LTD v. S.C.C NIGERIA LTD & ORS (2009) 17 NWLR (pt. 1170) 383** to the effect that Hon, Justice Nnaemeka-Agu, Judge of Anambra State, and Hon. Justice Iguh, Chief Judge of Anambra State, having respectively been elevated to the Federal Court of Appeal (predecessor of the Court of Appeal) and the Supreme Court had ceased to be Judge and Chief Judge, respectively, of the Anambra State

and “therefore deprived of the jurisdiction to conclude the hearing and ultimate determination” of the cases they were, each, handling before their elevations. This Court declared each of their decisions, post-elevation, a “nullity for having been given without jurisdiction”.

In the analogous cases: **Gabriel Iyela V. C.O.P (1969) 1 NMLR 180 and SODEINDE v. THE STATE** – FCA/1b/20/1977, it was held that a judge transferred or deployed from one state to another, upon the creation of a new State, who came back to the former State to conclude and or deliver judgment lacked jurisdiction to do so and that the judgment was a nullity. The constitutional issue in that case is that the Judge lacked extra-territorial jurisdiction, just as the High Court of the latter State also lacked extra-territorial jurisdiction, in respect of the

matters pending in the High Court of the former State, outside its area of jurisdiction and authority.

The lower court acknowledged the extancy or subsistence of the decision in OGBUNYINYA v. OKUDO ((supra) and OUR LINE LTD v. S.C.C NIGERIA LTD (supra). In its judgment, at pages 2104 – 2105 of vol.4 of the Record, it made effort to distinguish the two cases from the instant case, thus –

> The cases OGBUNYINYA v. OKUDO and OUR LINE LIMITED v. SCC NIGERIA (supra) –, were decided on the state of the law at the material time and in the absence of any statutory provisions, such as Section 396(7) of ACJA, allowing, permitting or authorising the affected Hon. Justice of the Court of Appeal and Supreme Court respectively, to

conclude the matters they commenced, but could not conclude before their elevations.

The principle laid down and stated in the two (2) cases that a Judge elevated or appointed to a higher court would cease to be a Judge of the court from which he was elevated and would therefore lack the requisite statutory provisions (sic: jurisdiction?) allowing or authorising him to do so, is still extant and applicable in appropriate cases.

It is, however not, applicable in the Appellant's case since the provisions of Section 369(7) (sic: 396(7)) of the ACJA specifically permit and authorise the Hon. M. B. Idris, JCA, to sit in the lower court as a Judge of that court for the purpose of concluding part heard criminal matters commenced but not concluded by him

before his elevation to the (Court of Appeal)

Mr. Rotimi Jacobs, SAN, of counsel to the 1st Respondent, the prosecutor, submits that "the law has changed since 2015 when the Administration of Criminal Justice Act was enacted". The primary duty of the respondent's counsel is ordinarily to defend the decision appealed. In the instant case he is on a discordant note with the decision appealed. The lower court had specifically stated that "the principle laid down and stated in the two (2) cases (i.e OGBUNYINYA v. OKUDO and OUR LINE LIMITED v. SCC NIGERIA (supra) that a Judge elevated or appointed to a higher court would cease to be a judge of the court from which he was elevated and would therefore lack the requisite" jurisdiction to conclude his part-heard matter in the court from which he was elevated was/is still extant. The learned senior counsel cannot advocate the contrary of the

decision appealed without the courtesy of a cross-appeal. He filed no cross-appeal on behalf of the 1st Respondent.

Has the law espoused in OGBUNYINYA v. OKUDO (supra), cited with approval in OUR LINE LTD V. SCC NIG. LTD (supra), changed since 2015 upon the enactment of the ACJA, 2015? Mr. George E. Ukaegbu of counsel to the Appellant has submitted that Section 396(7) of ACJA, 2015 "does not have the capacity of the import attributed to it as that is tantamount to saying that by the said provision, the National Assembly has amended the provisions of Section 250(2) and 253 of the 1999 Constitution which provisions the principle in OGBUNYINYA & ORS v. OKUDO & ORS (supra) is in tandem with".

I pause here awhile to have a peep at the establishment and enabling provisions of the 1999 Constitution as regards

the Court of Appeal and the Federal High Court. Both courts are creations of the said Constitution, like the National Assembly.

Section 237 of the Constitution establishing the Court of Appeal, provides, inter alia –

> 237(1) There shall be a Court of Appeal.
>
> (2) The Court of Appeal shall consist of –
>
> a) A President of the Court of Appeal; and
>
> b) such number of Justices of the Court of Appeal, -
>
> - , as may be prescribed by an Act of the National Assembly.

Section 238(2) of the same Constitution provides that "the appointment of a person to the office of a Justice of the Court of Appeal shall be made by the President on the

recommendation of the National Judicial Council". The Court of Appeal is ordinarily established to hear and determine appeals from the Federal High Court, etc; by virtue of Section 240 of the Constitution. The exception to its being exclusively an appellate Court is provided in Section 239 of the Constitution by which it is constituted to "have original jurisdiction to hear and determine any questions as to whether any person has been validly elected to the office of President or Vice-President" and/or whether such offices have ceased or become vacant.

The Court the Hon. M. B. Idris, JCA, was elevated to as the Justice of the Court of Appeal is substantially an appellate Court. The President of the Court of Appeal by his "fiat/permission" issued to the Hon. M. B. Idris JCA to proceed to the Federal High Court, Lagos to conclude the part-heard

criminal matter: FHC/ABJ/CR/56/07 – did not direct him to perform any of the constitutional functions of the Court of Appeal. The Court of Appeal, being not a first instance Court vested jurisdiction to hear and determine criminal causes or matters, lacks jurisdiction to dabble into such matters.

Section 249 of the Constitution, the establishment provision regarding the Federal High Court, provides –

> **249.(1) There shall be a Federal High Court**
>
> **(2) The Federal High Court shall consist of –**
>
> **(a) a Chief Judge of the Federal High Court; and**
>
> **(b) such number of Judges of the Federal High Court, as may be prescribed by an Act of the National Assembly**

By Section 250(2) of the Constitution the President, on the recommendation of the National Judicial Council, does the appointment of a person to the office of a Judge of the Federal High Court. It is clear from Section 251 of the Constitution that the Federal High Court is only a first instance Court. It has no appellate powers or jurisdiction. Section 252(2) of the Constitution empowers the National Assembly, by Law, to "make provisions conferring upon the Federal High Court powers additional to those" conferred by the Constitution "as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction". This provision has to do with the powers or the jurisdiction of the Federal High Court as duly constituted under Section 253 of the Constitution. That is, that "the Federal High Court shall be duly constituted if it consists of at least one Judge of that Court". I

should think that the special dispensation granted to the "Judge of the High Court elevated to the Court of Appeal – to continue to sit as a High Court Judge only for the purpose of concluding any part- heard criminal matter pending before him at the time of his elevation" cannot be accommodated under or by Section 252 of the Constitution. I must point out, right away, that by the tenor of Section 253 of the Constitution, the Federal High Court is not duly constituted by Judge(s) who had ceased to be judge(s) of that Court by the fact of his elevation to the Court of Appeal or otherwise.

Upon his elevation to the Court of Appeal the Honourable, M. B. Idris, JCA had ceased to be a Judge of the Federal High Court: **OGBUNYINYA v. OKUDO (supra); OUR LINE LTD v. SCC NIG LTD** (supra). I do not think that it is reasonable to construe Section 252(2) of the Constitution together with

Section 396(7) of the ACJA, 2015 to mean or to have the effect of extending the tenure of office of a Judge of the Federal High Court who had been elevated to the Court of Appeal and whose tenure had ceased by the fact of the elevation. The appointing power, of course, resides only in the Presidency; that is, the Executive arm and not in the Legislature nor the Judicature.

My Lords, let us examine Section 396(7) ACJA, 2015 in the prism of the internal affairs or workings of the two Courts – the Federal High Court and the Court of Appeal. For as long as the Judge remains the Judge of the Federal High Court only the Chief Judge has the vires and powers to issue fiat directing him to conclude part-heard matters pending in that Court. He cannot grant a fiat to a Justice of the Court of Appeal to conclude part-heard criminal matters pending before the

Federal High Court at the time of the latter's elevation to the Court of Appeal. Section 19(3) & (4) of the Federal High Court Act, Cap F12 LFN 2010 clearly consign the prerogative of assigning any judicial function to any Judge of the Federal High Court in respect of a particular cause or matter to the Chief Judge of the Federal High Court. The President of the Court of Appeal is not empowered to share that statutory function with the Chief Judge of the Federal High Court. Section 19(3) & (4) of the Federal High Court Act provide –

> **19(3) The Chief Judge shall determine the distribution of the business before the Court amongst the Judges thereof and may assign any judicial function to any Judge or Judges or in respect of a particular cause or matter in a Judicial Division.**

> (4) Subject to the direction of the Chief Judge, every Judge of the Court shall sit for the trial of civil and criminal causes or matters and for the disposal of other legal businesses the Chief Judge may think fit.
>
> [underlinings supplied]

The President of the Court of Appeal does not have any powers in law to direct any Judge of the Federal High Court to hear and determine any matter pending before the Federal High Court. He also lacks powers to issue any fiat/permission to any Judge of the Federal High Court to conclude any part – heard matter pending in that Court. The Chief Judge of the Federal High Court is by Section 1(2)(a) of the Federal High Court Act the sole statutory authority vested "overall control and supervision of the administration of the "Federal High

Court". The President of Court of Appeal does not share in that function.

The Appellant submits, and I agree, that the President of the Court of Appeal is not recognized by both the ACJA, 2015 and the Federal High Court Act as the appropriate authority to exercise any powers pursuant to the provisions of either the Federal High Court Act or the ACJA, 2015. Accordingly, the President of the Court of Appeal, when he informed the Honourable, Justice M. B. Idris, JCA vide his letter of 2nd July, 2018 of his "mandate" to wit:

> **You have my FIAT/Permission to conclude the part heard criminal matter: FHC/ABJ/CR/56/07 Between Federal Republic of Nigeria vs. Orji Uzo Kalu & Ors now pending before the Federal High Court, Lagos**,

obviously had acted ultra vires. I agree with the Appellant that the President of the Court of Appeal lacks the competence to control and supervise the administration of the Federal High Court as envisaged by Sections 1(2)(a) and 19(3) & (4) of the Federal High Court Act. Section 396(7) of the ACJA, 2015 does not so empower the President of the Court of Appeal to usurp the statutory functions of the Chief Judge of the Federal High Court. The powers donated or vested by Sections 1(2)(a) and 19(3) & (4) of the Federal High Court can only be exercised within the limits prescribed by statute **(SANUSI v. AYOOLA (1992) 9 NWLR (pt. 265) 275 at 293)** and only by the authority or person to whom they are donated or vested. An exercise of any statutory power either outside the limits prescribed or by the person or authority not designated to exercise the power will certainly be ultra vires, null and void.

My Lords, I now come back to the reason the lower Court gave for the inapplicability of the principle laid down by this Court in **OUR LINE LTD v. SCC (NIG) LTD** (supra) in which the case of **OGBUNYINYA v. OKUDO** (supra) was cited with approval. The lower Court acknowledged that the principle laid down in those two (2) cases "is still extant and applicable". The lower Court, however, found the principle inapplicable to the instant case "since the provisions of Section [396(7)] of the ACJA specifically permit or authorize the Hon. M. B. Idris, JCA to sit in the lower Court as a Judge of that Court for the purpose of concluding part-heard criminal matters commenced but not concluded by him before his elevation to (Court of Appeal)". I have been trying to demonstrate the fallacy of this argument advanced by the lower Court.

Section 254(1) of the 1979 Constitution, the subject of interpretation providing the anchor on which the decision in **OUR LINE LTD v. SCC (NIG.) LTD** (supra) was fastened, is almost in pari materia with Section 290(1) of the 1999 Constitution. The only difference is the addition of the words – "declared his assets and liabilities as prescribed under the Constitution and has subsequently taken" – appearing in Section 290(1) of the 1999 Constitution. Section 254(1) of the 1979 Constitution simply provided –

> **254(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has taken and subscribed the oath of allegiance and the judicial oath prescribed in the sixth Schedule to this Constitution.**

Section 290(1) of the 1999 Constitution with the additional clause provides –

> 290(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed under this Constitution and has subsequently taken the Oath of Allegiance and the Judicial Oath prescribed in the Seventh Schedule to this Constitution.

The interpretation given to Section 254(1) of the 1979 Constitution is to the effect that a Judge elevated to a higher Court had ceased to be a Judge of the Court from which he was elevated and had, by that appointment therefore, been

deprived of the jurisdiction to conclude the hearing of the – case before him at the Court from where he was elevated. In the unanimous judgment of this Court, delivered on Friday, 17th July, 2009, in OUR LINE LTD v. SCC (NIG) LTD the point was poignantly made in the opinions of Mohammed, JSC (who delivered the lead judgment) at pages 406 – 407 and Onnoghen, JSC at pages 414 – 415. That decision in OUR LINE LTD v. SCC (NIG.) LTD (supra) holds sway. The lower Court admitted that it is still a good law. It is, in my opinion, material and applicable to this case in the resolution of the core issue in this appeal, even under Section 290(1) of the 1999 Constitution.

I have no doubt, whatever, that the Honourable, M. B. Idris, JCA, having been elevated to the Court of Appeal, had ceased to be a Judge of the Federal High Court. Accordingly,

he had been deprived of whatever jurisdiction he had as a Judge of the Federal High Court to proceed in the case "to conclude the hearing and ultimate determination" of the part-heard criminal case No. FHC/ABJ/CR/56/07 – Between Federal Republic of Nigeria v. Orji Uzor Kalu & Ors. (in which the Appellant herein was the 2nd Defendant) which was pending at the Federal High Court, Lagos at the time the said Honourable, M. B. Idris, JCA was elevated to the Court of Appeal.

The enactment of Section 396(7) of ACJA, 2015 is an attempt by the National Assembly, in view of this Court's interpretation of Section 254(1) of the 1979 Constitution which is reproduced as the substantial part of Section 290(1) of the 1999 Constitution, to whittle down the operation of the said provisions of the Constitution. Ab initio Section 396(7) of the

ACJA, 2015 was set out to frontally contradict and challenge the letters, substance and spirit of Section 290(1) of the 1999 Constitution. To that extent Section 396(7) of the ACJA, 2015 is inconsistent with the Constitution, particularly Section 290(1) thereof. Therefore, by operation of Section 1(3) of the Constitution, Section 396(7) of the ACJA, 2015, to the extent of its inconsistency with Section 290(1) of the Constitution, is void.

I hereby allow this appeal. Section 396(7) of the ACJA, 2015 is, in my firm view, an unnecessarily gratuitous legislative interference with, intrusion into or an outright usurpation of the appointing powers of the Executive arm consigned specifically to the President of the Federal Republic of Nigeria by the Constitution in Sections 250(1) and 238(2) thereof. The "FIAT/permission" issued on 2nd July, 2018, by the President,

Court of Appeal to the Honourable, Justice M. B. Idris, JCA to proceed to the Federal High Court, Lagos and conclude the part-heard criminal matter: FHC/ABJ/CR/56/07-, notwithstanding the fact that the Honourable, Justice M. B. Idris, JCA, upon his elevation to the Court of Appeal had ceased, not only to be a Judge of the Federal High Court, but also to have and exercise the powers and jurisdiction of the Federal High Court, is ultra vires Sections 1(2)(a) and 19(3) & (4) of the Federal High Court Act, the same being an outright usurpation of the office and powers of the Chief Judge of the Federal High Court. The said FIAT/Permission, issued without any lawful or constitutional authority and being a nullity, is hereby set aside. All steps, including actions, proceedings and decisions and orders issued, taken and/or conducted pursuant to the said FIAT/Permission dated 2nd July, 2018 as

they pertain to and relate to the Appellant herein are hereby set aside.

The judgment of the Court of Appeal No. CA/L/1064C/2018, delivered on 24th April, 2019 particularly in respect of the Appellant and as it affected him is hereby set aside. The case No. FHC/ABJ/CR/56/2007, as it pertains or relates to the Appellant as the 2nd Defendant at the trial Court, is hereby remitted to the Chief Judge of Federal High Court for re-assignment to another judge of the Federal High Court for trial *de novo*.

Appeal allowed.

EJEMBI EKO

JUSTICE, SUPREME COURT

Appearances:

Chief Solomon Akuma, SAN, with George E. Ukaegbu, Esq., Emmanuel U. Akuma, Esq. and Daniel Okorie, Esq. for the Appellant

Adebisi Adeniyi Esq. with O. A. Atolagbe, Esq for the 1st Respondent

L. O. Fagbemi SAN; Chief H. O. Afolabi, SAN with K. O. Fagbemi, Esq., Omosanya A. Popoola, Esq. and Thomas Ojo, Esq. for the 2nd Respondent.